



Paper No. 17

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CANADA

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Spraggs
Application No. 09/554,419
Filed: May 11, 2000
Attorney Docket No. PA1065US
For: SYSTEM AND METHOD OF SENDING
AND RECEIVING SECURE DATA WITH A
SHARED KEY

This is a decision on the petition under 37 CFR 1.137(b), filed June 30, 2003 via facsimile, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to properly reply to the final Office action, mailed July 3, 2002. Petitioner filed an amendment after final on October 21, 2002 (certificate of mailing date September 27, 2002). The amendment after final failed to place the above-identified application in *prima facie* condition for allowance, as was stated in the October 30, 2002 Advisory Action. This application became abandoned on October 4, 2002. On November 7, 2002, the Office granted a request by the attorneys of record to withdraw from representation. On January 21, 2003, a Notice of Abandonment was mailed. Applicant's petition to revive under 37 CFR 1.137(a), filed April 8, 2003, was dismissed on May 19, 2003 for failure to submit a proper reply and failure to show that the entire delay in responding to the July 3, 2002 final Office action was unavoidable.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). This petition lacks items (1) and (2).

Regarding (1) above, petitioner still has not filed a proper reply. The amendment after final, filed October 21, 2002 (certificate of mailing date September 27, 2002), did not eliminate all of the Examiner's objections and rejections. It did not place the case in *prima facie* condition for allowance. In any reconsideration petition, petitioner must submit one of the following: (1) a Notice of Appeal, (2) a continuing application, or (3) an RCE and submission.

Regarding (2) above, the small entity fee for filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b) is set forth in 37 CFR 1.17(m) as \$650. The payment of the petition fee is a prerequisite to the filing of a petition to revive under 37 CFR 1.137(b). This requirement cannot be waived. MPEP 711.03(c)(III)(B). A review of Office records indicates that petitioner only authorized the Office to charge \$640 to her credit card.¹

Petitioner is urged to submit \$10.00 and an acceptable reply to the July 3, 2002 final Office action within two (2) months of the mail date of this decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: (703) 308-6916
 Attn: Office of Petitions

By hand: Office of Petitions
 2201 South Clark Place
 Crystal Plaza 4, Suite 3C23
 Arlington, VA 22202

Telephone inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

¹ Petitioner is informed that it is Office policy to destroy credit card authorization forms after fees are charged to the credit card, due to security concerns. Petitioner must submit another credit card authorization if petitioner desires the Office to charge the \$10 owed to her credit card.